

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RATE ADJUSTMENT OF WESTERN	)	CASE NO.
KENTUCKY GAS COMPANY	)	90-013

O R D E R

This matter arising upon petition of Western Kentucky Gas Company ("Western") filed May 14, 1990 and supplemented on September 6, 1990 for confidential protection of the federal and state income tax returns of Atmos Energy Corporation ("Atmos") and Western's and Atmos's consolidating and combining financial statements for the years ending September 30, 1988 and 1989 on the grounds that disclosure of the information is likely to cause Western competitive injury and that the information is protected from disclosure by statute, and it appearing to this Commission as follows:

The Attorney General of Kentucky ("Attorney General"), as an intervenor in this action, served requests for information upon Western which requested, in part, the information that Western seeks to protect as confidential. The information was filed in response to data requests 44, 45, 48A, 88C, and 95D, and consisted of federal and state income tax returns of Western and Atmos for the test year and a copy of Atmos's consolidating and combining financial statement for the years ended September 30, 1988 and 1989. The information sought to be protected has not been filed

with any other governmental agency, whether federal, state or local, exclusive of the Internal Revenue Service and the Kentucky Department of Revenue. Western contends that all the information sought to be protected is exempt from disclosure under KRS 61.878(1)(b) as confidential, commercial information, and that the income tax returns are further protected from disclosure under KRS 61.878(1)(i) and (j).

#### FEDERAL AND STATE INCOME TAX RETURNS

KRS 61.878(1)(j) exempts from the Kentucky Open Records Act "public records or information, the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly." KRS 131.190(1) requires that all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns are confidential in nature and are protected from disclosure by KRS 61.878(1)(j).

Similarly, KRS 61.878(1)(i) exempts from the Kentucky Open Records Act "all public records or information, the disclosure of which is prohibited by federal law or regulation." 26 USCA §603 protects the confidentiality of federal income tax returns by prohibiting their public disclosure by state officials. Therefore, the federal income tax returns are exempt from disclosure under KRS 61.878(1)(i).

#### CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS

In response to the Attorney General's data request No. 45, Western has filed a copy of Atmos's consolidated and combined financial statements for the years ended September 30, 1988 and

1989. Western contends that this information is protected from disclosure under KRS 61.878(1)(b) as confidential, commercial information.

To qualify for the exemption provided by KRS 61.878(1)(b) it must be established that disclosure of the information is likely to cause substantial competitive injury to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

While the petition establishes that Western and Atmos operate in a highly competitive environment, it does not identify any competitor, nor does it describe how a competitor could use the information contained in the financial statements to Western's and Atmos's detriment. Therefore, the petition does not establish that the financial statement is entitled to protection as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the federal and state income tax returns for the test year, which Western has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. Western shall, to the extent that it has not previously done so, within 10 days of the date of this Order, filed edited copies of the income tax returns with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

3. The petition to protect as confidential the consolidated and combined financial statements for the years ending September 30, 1988 and 1989, shall be held in abeyance to allow Western to supplement its petition with a statement identifying the competitors who would benefit from the information contained in the information sought to be protected, and describing how the competitors could use the information to Western's and Atmos's detriment.

4. If such statement is not filed within 10 days of the date of this Order, the petition for confidentiality for protection of the financial statements shall, without further Orders herein, be denied and the information shall be placed in the public record.

Done at Frankfort, Kentucky, this 28th day of January, 1991.


PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner